

Mental Capacity Act and safeguarding vulnerable adults

Aim

To give professionals working with people with learning disability an understanding of how the Mental Capacity Act impacts on the safeguarding of vulnerable adults.

Objectives

- To ensure a common understanding of the key concepts of capacity and best interests as they relate to people with a learning disability
- To develop a knowledge of the key aspects of the MCA relating to safeguarding
- To develop an understanding of when it is appropriate to involve an IMCA
- To explore how these aspects of the Act can assist in the safeguarding of vulnerable adults

Principles

- Assumption of capacity
- Must take all practical steps to assist decision making
- Can make unwise decisions without being assumed to lack capacity
- Must act in person's best interests
- Consider less restrictive alternatives

Lacking capacity

A person lacks capacity if

- Unable to make decision
- Because of impairment of or disturbance in functioning of, the mind or brain

A person is unable to make a decision if unable to:

- Understand the relevant information
- Retain the information
- Use the information to make the decision
- Communicate the decision

Best interests

- Will the person regain capacity and when?
- Permit and encourage the person to be involved as fully as possible
- Consider the person's past and present wishes, beliefs and values, other circumstances she would be likely to consider
- Take account of the views of anyone engaged in caring for her or interested in her welfare

Independent Mental Capacity Advocates

Must involve if no family or friend appropriate to consult and the decision is about:

- Serious medical treatment
- Long term accommodation provided by NHS or Local authority
- Except where there is a person nominated by person, a court deputy or an attorney

IMCA

Must involve if:

- Application is made for Deprivation of Liberty and there are no friends or family to consult
- Person is deprived of their liberty and they or their representative request an IMCA

IMCA

May involve if:

- Adult safeguarding measures are being considered or taken
- The person lacks capacity to agree to one or more protective measures
- It would be of benefit to the person

Role of IMCA

- Support and represent the person
- Consult with others
- Ascertain the person's wishes, feelings, preferences & values
- Ensure all possible courses of action considered
- Check the framework of the Act is followed

Involving an IMCA in safeguarding

- Are there family and friends involved?
- Does the person already have an advocate?
- Is there exposure to serious risk?
- Will likely decisions impact on the person's rights?

Court of Protection

- Can make declarations about whether a person lacks capacity or whether an act is/would be lawful
- Make a decision on a person's behalf
- Appoint a deputy to make decisions on a person's behalf

Court Deputies

- Court can appoint if a series of decisions need making so that a single order is not appropriate
- Person can apply to court to become a deputy if issue cannot be addressed other than by court
- People who are already receivers will continue to act as before but be known as deputy for financial affairs

Office of the Public Guardian

- Replaces Public Guardianship Office
- Maintains a register of LPAs and court deputies
- Supervises deputies
- Investigates complaints
- Court visitors
- Provides information to the public

Lasting Power of Attorney

- Person must have capacity at the time they take it out.
- Two types: personal welfare attorney or property and affairs attorney
- Can have only one, can have the same person for both or different
- The attorney must act in the person's best interests

Creating Lasting Power of Attorney

- Person have capacity to do this
- Completes a form
- Can put restrictions on the form
- Can name someone to be notified if the powers are used
- Certificate provider must sign to say the person understands what they are doing
- Must be registered with Public Guardian before it can be used

Personal Welfare Attorney

- Makes decisions about personal welfare which the person can't make for themselves
- Includes healthcare and medical treatment
- Can only be used when the person lacks capacity
- Can only be used to refuse life sustaining treatment if the donor has specifically authorised this

Property and Affairs Attorney

- Can be used when the person has capacity
- Donor can state that it is only to be used when they lack capacity
- Can be used to make any decision relating to the person's finances and property
- Can be used to make gifts or donations within limits

Restraint

- Two additional conditions:
Must reasonably believe that it is necessary to prevent harm to the person
Must be proportionate to the likelihood and seriousness of the harm
- Restraint:
Use or threat to use force to secure the doing of an act which the person resists or
Restrict liberty of movement whether or not person resists

What is deprivation of liberty?

- Restraint is used to admit a person who resists admission.
- Staff exercise complete and effective control for a significant period.
- Staff exercise control over assessments, treatment, contacts and residence.
- The person will not be released into the care of others, or permitted to live elsewhere,

What is deprivation of liberty?

- A request by carers for a person to be discharged to their care is refused.
- The person is unable to maintain social contacts.
- The person loses autonomy because they are under continuous supervision and control.

Deprivation of Liberty

- Application by the care home or hospital
- Supervisory Body – PCT or Local Authority
- 6 assessments before deciding to authorise

Assessments

- Age
- No refusal
- Mental Capacity
- Mental Health
- Eligibility
- Best interests

Authorisation

- Standard authorisation – maximum 12 months
- Urgent authorisation – maximum 7 days
- Appointment of representative
- Review

Advance decisions

- An advance decision to refuse treatment
- Must have capacity at the time you make it
- Must be applicable to the situation
- If it relates to life sustaining treatment, must be in writing and witnessed
- Doesn't apply if the treatment is covered by the Mental Health Act

Excluded decisions

- Marriage
- Sexual relations
- Divorce
- Adoption
- Treatment under the Mental Health Act
- Voting

New Offences

Ill treatment or neglect of a person who lacks capacity

Applies to:

- Anyone who has care of a person who lacks capacity
- Donee of power of attorney
- Court appointed deputy

- What mental capacity issues arose?
- In what ways was the Mental Capacity Act helpful?